



To fulfill President Lincoln's promise "To care for him who shall have borne the battle, and for his widow, and his orphan" by serving and honoring the men and women who are America's Veterans.

**Chief Freedom of Information Act Officer Report
February 2021**

**Dominic Cussatt
Acting Assistant Secretary for Information & Technology
and Chief FOIA Officer**

Section 1: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ's [FOIA Guidelines](#) is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

A. FOIA Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at this level?

- **Yes**

2. Please provide the name and title of your agency's Chief FOIA Officer.

- **Dominic Cussatt (Acting)**

B. FOIA Training

3. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

- **Due to COVID19 the agency has provided mainly virtual FOIA trainings to FOIA personnel. The agency FOIA Officers attended VA and VHA FOIA webinars. FOIA Officers reviewed DOJ's website material and American Society of Access Professionals (ASAP) Virtual National Training Conference, July 28-29, 2020.**

4. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend substantive FOIA training during the reporting period such as that provided by the Department of Justice?

- **Yes**

5. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

- **FOIA professionals took substantial FOIA training or conferences presented by DOJ, AINS (FOIAXpress), and VA OGC Information Law Group. Additionally, September 15, 2020 Virtual brown bag training, FOIA 101- "The Basics" brown bag training, Topics covered: The FOIA Process, A Basic Introduction, FOIA Enacted, The Statutes, and Policy; OAWP FOIA Analysts also participated in the American Society of Access Professionals (ASAP), July 28-29. Updates in FOIA statutory and case law, to applicability of FOIA exemptions, and to government privacy regimes. Common problems and solutions for agency FOIA programs. How FOIA programs can leverage technology to improve FOIA processes.**

6. Please provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

- 87%

7. OIP has directed agencies to “take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year.” If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency’s plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

- N/A

C. Outreach

8. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency’s FOIA administration.

- No

D. Other Initiatives

9. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff.

- **New attorney orientation outlining FOIA and PA, Sunshine Week 2020 – a small FOIA display was set up in the lobby of our building and emails were sent to all staff on March 16, 2020 about Sunshine Week and included information about the history of FOIA, what it is with a reminder that everyone is responsible for FOIA. Also included was a copy of the elements of the display for reference. When non-FOIA professionals or official records custodian ask for responsive records, the agency includes an OGC legal opinion about their FOIA responsibilities to provide all responsive records. Also letting those non-FOIA professionals or official records custodian know that their VA components are responsible for any FOIA judicial fines or attorney fees. Additionally, the agency has FOIA newsletters that are concurrently sent out to keep all non-FOIA Personnel informed of the obligation under FOIA.**

10. Optional -- If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

- N/A

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

DOJ's [FOIA Guidelines](#) emphasize that "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that describes your agency's efforts in this area.

1. For Fiscal Year 2020, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2020 Annual FOIA Report.

- **39.58**

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2020 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

- **The Department is decentralized, and each component office must utilize the processing procedures to adjudicate requests for expedited processing. The VACO FOIA Office will work closely with all the Administrations and Central Office Components to ensure that the average number of days for adjudicating requests for expedited processing is less than 10 days. In particular, the VACO FOIA Office will discuss the importance of identifying and adjudicating requests for expedited processing in a timely fashion during training throughout the year.**

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report or raw data, using active workflows and track management, reviewing and updating processing procedures, etc.

- **The VHA FOIA program is evaluated by Privacy Compliance Assurance (PCA), a component of the VHA Information Access and Privacy Office. PCA conducts an independent review of the VHA FOIA program by auditing all facilities on a 3-year cycle. PCA evaluates a VHA FOIA program for compliance with the FOIA and VHA/VA FOIA policies. Results are trended and provided to facility and VHA Central Office Senior leadership. PCA also provides results to the VHA FOIA Office to incorporate into the training program. PCA conducts on-site and virtual audits.**

Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

4. Standard Operating Procedures (SOPs): Having SOPs can improve the consistency and quality of an agency's FOIA process. In addition, describing an agency's standard practices for handling FOIA requests on agency FOIA websites can help requesters better understand how their request will be handled.

a) Does your agency have SOPs that outline general processes for handling FOIA requests and appeals?

- **Yes**

b) If not, does your agency have plans to create FOIA SOPs? **N/A**

c) If yes, how often are they reviewed/updated to account for changes in law, best practices, and technology? **We conduct annual reviews and update as necessary**

d) In addition to having SOPs, does your agency post or otherwise describe your standard processes for handling requests on your website? **Yes**

- **Yes**

5. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2020 (please provide a total number or an estimate of the number).

- **Our Agency had approximately 158 FOIA Public Liaison contacts/inquiries.**

6. Does your agency frequently receive common categories of first-party requests? If so, please describe the types of requests and if your agency has explored establishing alternative means of access to these records outside of the FOIA process?

- **Yes, we try to ensure there is a sufficient amount of commonly requested categories shared on our VA website. We also ensure the FOIA reading room is up to date with all frequently requested categories and information. Additionally, on the FOIA section of our VA website there is information the requester will find useful without having to create a FOIA. VA is continuously making effort to be transparent with the public, as we are working on implementing more means of access to requesters.**

7. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations?

- **Yes**

8. Please explain how your agency worked to mitigate the impact of the COVID-19 pandemic on FOIA processing. Examples could include, but are not limited to: altering workflows, implementing new technology, providing notices and instructions or otherwise communicating directly with requesters.

- **Due to COVID19, VA FOIA Office has implemented new workflows virtually. Notifying all new and existing requesters to send all request through our FOIA Services Inbox, and/or PAL. Having FOIA personnel instruct all requesters that the process is still the same, the personnel are just working virtually to ensure the safety of the office is kept. As COVID19 continues, we plan to ensure all physical mailed request are still being processed by having a FOIA personnel retrieve all mail and process. VA FOIA personnel also meet**

biweekly to discuss the status of the request along with any process breakdowns and/or best practices.

9. Optional -- Please describe:

- Best practices used to ensure that your FOIA system operates efficiently and effectively
 - **VA FOIA Office published an administration level policy on FOIA, VA FOIA Directive and VA FOIA Handbook, and also developed a FOIA Newcomers Guide and Fact Sheet to assist field FOIA Officers in processing FOIA requests. Our Agency has also established an eDiscovery Enterprise Product Support Team specifically for the purpose of conducting FOIA searches of VA's electronic media storage systems which streamlines our old process of requesting electronic data from many different entities.**
- Any challenges your agency faces in this area
- **N/A**

Section III: Steps Taken to Increase Proactive Disclosures

The Department of Justice has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

- **Our Agency has proactively disclosed a variety of information for public consumption at the following links:**
- **VA FOIA Library** <https://www.va.gov/FOIA/Library.asp>
- **Veterans Benefits Administration (VBA) Performance**
- <http://www.vba.va.gov/reports/aspiremap.asp>
- **Veterans Population Data**
- <http://www.va.gov/vetdata/Veteran Population.asp>
- **Global War on Terror (GWOT) / Gulf War Veterans**
- **Information System (GWVIS)** <http://www.va.gov/VETDATA/>
- **Gross Distribution of Expenditures (GDx)**
- <http://www.va.gov/VETDATA/Expenditures.asp>
- **Senior Leadership Emails/Travel, THIRD PARTY LAND USES**
- **Agent Orange**

2. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?

- **Yes**

3. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

- **VA has made accessing information to the public readily and available via the FOIA reading room. VA has also made some changes to the VA website to ensure the public can easily find information.**

4. Optional -- Please describe:

- Best practices used to improve proactive disclosures
- **Having all departments organize documents to ensure any information posted is concise and easy to access.**
- Any challenges your agency faces in this area

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that describes your agency's efforts in this area.

1. Please briefly describe the types of technology your agency uses to support your FOIA program. In addition, please highlight if your agency is leveraging or exploring any new technology that you have not previously reported. If so, please describe the type of technology.

- **Our Agency continues to utilize eDiscovery and Clearwell for conducting electronic searches and processing voluminous documents for complex requests. In addition, VA is also utilizing the Electronic Document Review tool in FOIAXpress, to conduct electronic searches and processing voluminous documents for complex requests.**

2. OIP issued [guidance](#) in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources, and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

- **Yes**

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2020?

- **Yes**

4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2021.

- **N/A**

5. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2019 Annual FOIA Report and, if available, for your agency's Fiscal Year 2020 Annual FOIA Report.

- [FOIA Library - Freedom Of Information Act FOIA \(va.gov\)](#)

6. Optional -- Please describe:

- Best practices used in greater utilizing technology
- Any challenges your agency faces in this area

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's FY 2019 and 2020 Annual FOIA Reports.

A. Simple Track

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

1. Does your agency utilize a separate track for simple requests?

- **Yes**

2. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2020?

- **No**

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2020 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) *divided by* (requests processed from Section V.A.) x 100.

- **83%**

4. If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?

- **N/A**

B. Backlogs

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2019 and Fiscal Year 2020 when completing this section of your Chief FOIA Officer Report.

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2020, according to Annual FOIA Report Section XII.A, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

- **No**

6. If not, according to Annual FOIA Report Section V.A, did your agency process more requests during Fiscal Year 2020 than it did during Fiscal Year 2019?

- **No**

7. If your agency's request backlog increased during Fiscal Year 2020, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests.
 - **Yes, the agency has seen an increase in request this FY**
- A loss of staff.
 - **Yes, we have had an influx of staff changes, from contractors to federal personnel. We have utilized a lot of time training and onboarding effective personnel to assist in processing and reducing the backlog.**
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
 - **"Any and all" subject matter request, broad scope request that personnel have to reach out to requester regarding the possibilities of narrowing the scope of the request to reduce search and review time.**
- Any other reasons – please briefly describe or provide examples when possible.
 - **COVID19 has slowed physically mailed request processing down.**

8. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2020. Please use the following

calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) *divided by* (requests received from Section V.A) x 100. If your agency has no request backlog, please answer with "N/A."

- 17%

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2020, according to Section XII.A of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

- Yes

10. If not, according to section VI.A of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2020 than it did during Fiscal Year 2019?

- No

11. If your agency's appeal backlog increased during Fiscal Year 2020, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

12. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2020. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) *divided by* (appeals received from Section VI.A) x 100. If your agency did not receive any appeals in Fiscal Year 2020 and/or has no appeal backlog, please answer with "N/A."

- 17%

C. Backlog Reduction Plans

13. In the 2020 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2019 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2020?

- Yes, The agency has taken the processing and reduction task and ensured each department has gotten the assistance they need to process their backlog. We have sent out all new FOIA trainings and regulations so all new and current employees know how to determine "proper"

FOIA requests. VA has hired contracting staff alongside federal personnel to search and process in a timely manner. We have used the best practices to ensure the backlog and all incoming request are processed on a first in first out metric.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2020, please explain your agency's plan to reduce this backlog during Fiscal Year 2021.

- **The agency has onboarded contracting support for the backlog reduction initiative and litigation support. Contracting support is processing all backlog and litigation cases while using best practices and updated VA guidance.**

D. Status of Oldest Requests, Appeals, and Consultations

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2019 and Fiscal Year 2020 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2020, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2019 Annual FOIA Report?

- **Yes**

16. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2019 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

- **N/A**

17. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

- **The agency has used best practices to ensure all the Ten oldest request are processed and closed. Such as, administrative closures, conducting searches within interagency drives and the FOIAXpress processing software to ensure all requests are complying under the FOIA. VA has taken its ten oldest request and tasked the contracting support with reaching out to requesters to narrow scopes, while also, following up and corresponding with all responsive offices for missing records. VA has updated all SOP's, Directives and administrative memos to ensure all responses are uniformed and concise to avoid any and all appeals**

TEN OLDEST APPEALS

18. In Fiscal Year 2020, did your agency close the ten oldest appeals that were reported pending in Section VII.C.5. of your Fiscal Year 2019 Annual FOIA Report?

- **Yes**

19. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2019 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

- **N/A**

20. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

- **The agency has used best practices to ensure all the Ten oldest request are processed and closed. Such as, administrative closures, conducting searches within interagency drives and the FOIAXpress processing software to ensure all requests are complying under the FOIA. VA has taken its ten oldest request and tasked the contracting support with reaching out to requesters to narrow scopes, while also, following up and corresponding with all responsive offices for missing records. VA has updated all SOP's, Directives and administrative memos to ensure all responses are uniformed and concise to avoid any and all appeals**

TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2020, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2019 Annual FOIA Report?

- **Yes**

22. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2019 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.

- **Personnel/Staff changes, COVID19 virtual processing and review.**

24. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

- **N/A**

25. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2021.

- **N/A**

F. Success Stories

Out of all the activities undertaken by your agency since March 2020 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas but should not be something that you have reported in a prior year. As noted above, OIP will highlight these agency success stories during Sunshine Week. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

- **This Fiscal Year our Agency saw an increase in the number of requests we received, and the level of complexity of these requests have also increased, requiring extensive searches with the probability of a very high volume of responsive records. We have also taken a great amount of time to train and revise the FOIA program throughout VACO. To mitigate this increase and the many labor-intensive man-hours to keep up with the processing workload and continue working to decrease the backlog, we are utilizing Electronic Document Review (EDR) licenses for FOIAXpress. Having the EDR technology has proven very effective in speeding up the discovery to search, sort and identify responsive records in large volumes of emails, attachments and other documents. Now our FOIA personnel can quickly filter, deduplicate, rank and sort documents for redaction and processing all within the FOIAXpress system. The agency has also tasked the contracting support with the backlog, which will support the increase of man hours and record search it will take to process this initiative. With these initiatives and the revisions of SOP's, correspondence, directives etc. The agency intends to have the resources and support to ensure processing time is reduced and closing request increases. In addition to these changes, the agency has given extensive training to VHA, OAWP, VBA and all new employees.**